



Report to the Auburn City Council

Action Item

7

Agenda Item No.

City Manager's Approval

To: Mayor and City Council
From: Robert Richardson, City Manager
Date: November 23, 2009
Subject: Resolution approving the City's participation in Placer County's AB 811 program.

The Issue

Shall the City Council adopt a Resolution consenting to the inclusion of properties within the incorporated area of the City of Auburn in the Placer County AB 811 program, Placer mPOWER, to finance energy and water efficiency and distributed generation renewable energy source improvements for property owners within the city limits and authorizing certain City staff to enter into a cooperative agreement outlining the City and County roles and responsibilities regarding the Placer mPOWER program.

Conclusion and Recommendation

That the City Council adopt a Resolution consenting to the inclusion of properties within the incorporated area of the City of Auburn in the Placer County AB 811 program, Placer mPOWER, to finance energy and water efficiency and distributed generation renewable energy source improvements for property owners within the city limits and authorizing certain City staff to enter into a cooperative agreement outlining the City and County roles and responsibilities regarding the Placer mPOWER program.

Background

On July 21, 2008, Governor Schwarzenegger signed Assembly Bill 811. AB 811 gives California cities and counties the ability to develop programs to provide financing to property owners for energy and water efficiency and distributed generation renewable energy source improvements. These improvements include insulation, dual-pane windows, efficient heating and air equipment systems, smart irrigation systems and solar photovoltaic systems. The new legislation applies to all types of properties including residential, commercial, industrial and agricultural properties.

Property owners who receive financing through the program enter into a contractual assessment which results in an assessment lien. The assessment is repaid on the property tax bill. If the property is sold, the outstanding assessment lien remains with the property

and the new property owner assumes the assessment lien payments on the property tax bill.

On October 6, 2009, the Board of Supervisors approved a proposal by the County Treasurer-Tax Collector and authorized her to proceed with implementing an AB 811 Program in Placer County. The proposal includes a provision for the cities within the County to opt into the program allowing property owners in the cities to participate in the program. The Board of Supervisors is scheduled to consider passing its Resolution of Intention to form the assessment district for the Program on December 8, 2009. A draft of that resolution is attached in substantial form. To be included in the boundaries of the assessment district, which must be identified in the County's Resolution of Intention, the City must pass its resolution consenting to the inclusion of properties within the city limits prior to the Board of Supervisors' passing the County's Resolution of Intention. The County understands that the City may have preferences regarding the approved technologies and other matters regarding the program and will work to reach agreement with the City on program details.

The Treasurer-Tax Collector's proposal for funding the program is through a financing arrangement utilizing funds in the Treasurer's Investment Portfolio. The Treasurer-Tax Collector has completed a Feasibility Study and Business Plan which is attached.

Alternatives

Do not participate in the program

Develop a City based AB 811 program

Fiscal Impact

No fiscal impact to the City.

Attachments

1. Resolution consenting to the inclusion of properties within the City of Auburn in the Placer County AB 811 program.
2. Cooperative Agreement to Implement PLACER Mpower AB 811 Program

RESOLUTION NO.

RESOLUTION OF THE CITY OF AUBURN, COUNTY OF PLACER, STATE OF CALIFORNIA, CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE CITY OF AUBURN'S INCORPORATED AREA IN THE COUNTY OF PLACER'S CONTRACTUAL ASSESSMENT PROGRAM, PLACER mPOWER, TO FINANCE DISRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS

WHEREAS, the City of Auburn is committed to development of renewable energy sources and energy efficiency improvements , reduction of greenhouse gases, protection of our environment, and reversal of climate change; and

WHEREAS, in Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code ("the Act"), the Legislature has authorized cities and counties to assist property owners in financing the cost of installing distributed generation renewable energy sources or making energy efficient improvements that are permanently fixed to their property ("the Improvements") through a contractual assessment program; and

WHEREAS, installation of such Improvements by property owners in the County of Placer (the "County") would promote the purposes cited above and assist the towns and cities of Placer County, including the City of Auburn in meeting its goals of reducing its greenhouse gas emissions; and

WHEREAS, the City of Auburn wishes to provide innovative solutions to its residents to achieve energy efficiency and independence, and in doing so cooperate with the County in order to efficiently and economically assist all County property owners in financing such Improvements; and

WHEREAS, the Board of Supervisors of the County (the "Board of Supervisors") has authority to establish a contractual assessment program ("the Program") as permitted by the Act, to assist property owners in financing the cost of installing distributed generation renewable energy sources or making energy and water efficient improvements that are permanently affixed to real property; and

WHEREAS, the County has conducted an analysis to determine the feasibility of the Program, and to develop parameters for implementation and administration of the Program; and

WHEREAS, the City of Auburn wishes to participate with the County in the Program under terms and conditions agreed to by the City of Auburn and County; and

WHEREAS, state law permits the County to offer participation in the Program to property owners in incorporated areas within the County so long as the governing body of such incorporated area approves the proposed Resolution of Intention to establish the Program, consents to the inclusion in the Program of properties in the incorporated area

within the County and consents to the Improvements to be done within such incorporated area and the assumption of jurisdiction there over by the County for the purposes aforesaid; and

WHEREAS, this Council has reviewed the County's proposed Resolution of Intention to establish the Program entitled "Resolution of the Board of Supervisors Declaring its Intention to Finance Distributed Generation Renewable Energy Sources and Energy Efficiency Improvements Through the Use of Contractual Assessments" ("the County Resolution").

NOW, THEREFORE, BE IT RESOLVED THAT:

1. This Council finds and declares that property in the City incorporated area will be benefited by the Improvements proposed in the County Resolution.
2. This Council hereby supports the County's feasibility analysis and development of an AB 811 contractual assessment program.
3. Before the Program is extended into the City's incorporated area, the City and County shall reach an agreement addressing administrative issues and, approved technologies, and any conditions the City wishes to impose on participating properties in its jurisdiction.
4. This Council hereby approves the proposed County Resolution substantially in the form referenced hereto.
5. This Council hereby finds and determines that in the event it is necessary for the Board of Supervisors to make minor, nonsubstantive changes to the County Resolution; such minor, nonsubstantive changes do not require the approval of the Council.
6. This Council consents to inclusion in the Program of all of the properties in the incorporated area within the City and to the Improvements proposed in the County Resolution within the City limits, upon the request and agreement of the property owner, in compliance with applicable laws, rules and regulations; and to the assumption of jurisdiction there over by the County for the purposes aforesaid.
7. The consent of this Council constitutes assent to the assumption of jurisdiction by the County for all purposes of the Program and authorizes the County, upon satisfaction of the conditions imposed in the resolution, to take each and every step required for or suitable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance and enforcement of bonds to represent such contractual assessments.

8. Staff is authorized and directed to coordinate with County staff to facilitate operation of the Program, and report back periodically to this Council on the success of the Program.
9. The Clerk is directed to send a certified copy of the resolution to the Clerk of the Board of Supervisors.

**COOPERATIVE AGREEMENT TO IMPLEMENT
Placer mPOWER AB 811 PROGRAM**

This Agreement is made by and between the County of Placer ("County") and the City of Auburn (the "City") also referred to hereafter as the "Parties".

RECITALS

A. County and City are committed to development of renewable energy sources and energy efficiency improvements, development of opportunities for property owners to reduce utility costs, and protection of our environment, and,

B. Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (the "Act") authorizes cities and counties to assist property owners in financing the cost of installing distributed generation renewable energy sources or making energy efficient improvements that are permanently fixed to their property through a contractual assessment program.

C. On _____, 2009 pursuant to this authority, and by County Resolution No. _____, the County established the "Placer money for Property Owner Water & Energy efficiency Retrofitting Program" (Placer mPOWER).

D. City has, by its Resolution No. _____, adopted on November 23, 2009 approved the County's Resolution of Intention to establish Placer mPOWER and consented to the inclusion of properties in the incorporated area governed by City in Placer mPOWER.

E. City has reviewed the Program Report prepared by the County of Placer that outlines the policies, initial list of eligible improvements, administration, and financing of Placer mPOWER.

F. The Parties agree that City property owners should have the opportunity to participate in Placer mPOWER under the terms and conditions contained in this Agreement.

G. The Parties understand that City may have preferences that meet the needs of its property owners. The Parties will work together to consider those preferences.

The Parties agree as follows:

1. **RECITALS.**

The above recitals are true and correct.

2. **COMMUNICATION/DESIGNATED REPRESENTATIVES.**

The persons identified below as the Designated Representative shall, upon execution of this Agreement, have authority to grant discretionary approvals identified in this Agreement. Except as otherwise specifically provided in this Agreement, any notice, submittal, or communication required or permitted to be served on a party, may be served by personal delivery to the person or the office of the person identified below. Service may also be made by mail, by placing first-class postage, and addressed as indicated below, and depositing in the United States mail to:

County

Program Administrator: Jenine Windeshausen
Phone: (530) 889-4140
Fax: (530) 889-4100
Email: energyinfo@placer.ca.gov
Designated Representative: Eric Waidmann

[City/Town]

Project Manager: _____
Phone: _____
Fax: _____
Email: _____
Designated Representative: _____

3. **COUNTY RESPONSIBILITIES.**

(a) Except as provided in paragraph (b) below, County shall make Placer mPOWER available to City property owners subject to the same terms and conditions applicable to property owners in the unincorporated area of Placer County.

(b) If, at any time, City wishes to request modifications to Placer mPOWER for City property owners, City shall so notify County in writing, identifying the modifications City requests to be implemented within City. County shall evaluate such request within 60 days and shall notify City in writing of the steps and conditions that would be necessary, if any, to implement City request. If County concludes that the request is not feasible or is detrimental to Placer mPOWER, it may, after discussion with the City, deny the request but shall work with City to attempt to otherwise address City's desires.

4. CITY RESPONSIBILITIES.

(a) City agrees to require permits for all projects and improvements requesting Placer mPOWER financing. City shall charge its usual and customary fees for such permits. City understands that County intends to rely upon issuance of a finalized permit as evidence that the improvements have been installed according to local building code requirements by the property owner.

(b) City agrees to make information about Placer mPOWER, provided by County, available at appropriate locations in City. City agrees to work with County to market Placer mPOWER through such means as inserting information into City's utility bills, linking to the Placer mPOWER website from City's website, and including information on Placer mPOWER in community information bulletins.

5. ADDITIONAL REQUIREMENTS.

(a) Authority to Amend Agreement: Changes to the Agreement may be authorized only by written amendment to this Agreement, signed by the Designated Representative of each party or such other representative as is authorized by the governing body of each party.

(b) No Waiver of Breach: The waiver by any party of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any later breach of the same or any other term or promise contained in this Agreement.

(c) Construction: To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The Parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

(d) Making of Agreement: The Parties acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. The Parties acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

(e) No Third-Party Beneficiaries: Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

(f) Applicable Law and Forum: This Agreement shall be construed and interpreted according to the substantive law of California excluding the law of

conflicts. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Placer.

(g) Captions: The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

(h) Merger: This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by all parties.

(i) Time of Essence: Time is and shall be of the essence of this Agreement and every provision hereof.

(j) Entire Agreement: This Agreement is the entire Agreement between the Parties.

6. AGREEMENT BECOMING EFFECTIVE.

This Agreement shall become effective upon execution by the Parties.

7. TERMINATION.

Either Party may terminate its participation in this Agreement by giving one hundred eighty (180) days advance written notice to all other parties of its intent to terminate its participation in this Agreement. Termination shall not affect the validity of any contractual assessment agreement already entered into by the County within the incorporated area of City.

8. COUNTERPART SIGNATURES.

This Agreement may be executed in counterpart and each of these executed counterparts shall have the same force and effect as an original instrument and as if all of the parties to the aggregate counterparts had signed the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as set forth below.

CITY/TOWN

COUNTY OF PLACER

By: _____
Mayor

By: _____
Jenine Windeshausen
Treasurer-Tax Collector
Program Administrator,
Placer mPOWER

Authorized by Resolution No: _____

Date: _____

Attest: _____
City/Town Clerk

Approved as to form:

Approved as to form:

City Attorney

County Counsel